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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/559,602

01/23/2007

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EXAMINER

STUART, COLIN W

ART UNIT

PAPER NUMBER

3771

NOTIFICATION DATE

DELIVERY MODE

03/03/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@madanlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/559,602	<b>Applicant(s)</b> OTTESTAD, NILS T.	
	<b>Examiner</b> COLIN STUART	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is in response to the amendment filed 11/12/09. As directed by the amendment claims 1-4 have been amended and no claims have been added nor cancelled. As such, claims 1-4 are pending in the instant application.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The term "comprising" is improper language.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one

Art Unit: 3771

skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In regards to claim 1, the language “wherein the pressure control valve ... downstream of the check valve” (line 11-13) appears to present a new matter issue. The examiner cannot ascertain from the specification, specifically from the figure whether the pressure control valve 13 is indeed downstream of the check valve 10.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Botos et al. (4,031,887) in view of Hill et al. (6,629,525).**

In regards to claim 1, Botos shows a portable breathing apparatus in Fig. 1, which includes a face mask 1, a demand valve 2, a supply line (lines connecting the various elements in Fig. 1), a filter device 5, and a compressed-air reservoir 10 for alternative supply of air to the demand valve. Botos also shows a check valve 11 which regulates the flow in the supply line circuit. Botos also shows a pressure control valve 13 for establishing an overpressure in the entire breathing system, the pressure control valve being upstream of the breathing valve and downstream of the check valve (see Fig. 1), preventing gas or liquid from the surroundings from penetrating the system. The demand valve 2 of Botos is a demand valve because “during inhalation and exhalation [the valve] cause a gas flow in the breathing circuit in the direction of arrows 4” (col. 2

Art Unit: 3771

ln. 27-30; see Fig. 1). Despite Botos' demand valve 2 and check valve 11 not being explicitly designated as a demand valve or check valve, they perform the functions of these two types of valves and furthermore one of ordinary skill in the art at the time the invention was made would recognize making the valves of the demand and check type an obvious design consideration as they would perform equally as well. Botos is silent as to providing the apparatus with a blower for supply of breathing air from an external ambient source; however Hill teaches a portable oxygen system which includes a blower for supplying breathing air from an external ambient source (Hill 112; Fig. 2; col. 5 ln. 34-35). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the supply element 18 of Botos with the blower as taught by Hill in order to provide a higher gas supply pressure than provided by supply element 18 of Botos. With the addition of the blower to the apparatus as taught by Botos, the check valve 11 is upstream of the blower and the filter device 5 cleans the breathing air from the blower.

**6. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Botos et al. (4,031,887) and Hill et al. (6,629,525) as applied to claim 1 above, and further in view of Wallen (6,035,851).**

In regards to claim 2, the modified Botos device discloses all the limitations as discussed above but is silent as to the filter device including two filter units connected in parallel. However, Wallen teaches a breathing circuit which includes two filter units (Wallen 16 and 22) which are connected in parallel (see Wallen Fig. 1). It would have

Art Unit: 3771

been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Botos apparatus to have the dual filter in parallel setup as taught by Wallen in order to provide addition cleaning to the breathing air should one filter fail.

In regards to claims 3 and 4, the modified Botos device discloses all the limitations as discussed above including a bellows (Botos 8) which constitute an elastic buffer volume filled with air from the blower when the demand valve 2 is closed and gives off air when an upstream air pressure of the breathing valve falls below a given value. The bellows (Botos 8) is found upstream of the demand valve as the Botos' apparatus recycles breathing air in the bellows which supply reusable breathing air to the breathing valve.

### ***Response to Arguments***

7. Applicant's arguments filed 11/12/09 have been fully considered but they are not persuasive.

Note that the amended abstract has not been entered because it was not submitted in a separate sheet, therefore the objection stands.

The applicant's argument that the prior art of record fails to teach the limitation of providing ambient air (filtered) to the user (remarks page 3) is not well-taken. While the examiner acknowledges that the Botos reference by itself fails to teach providing ambient air via a blower as claimed in the amendment, the Hill reference is relied upon for the teaching of a blower for providing a supply of breathing air from an external ambient source (see Hill Fig. 2; "Ambient air may be drawn through an inlet muffler 116

Art Unit: 3771

by the compressor 112" col. 5 ln. 34-35). The Hill reference also includes a filter for this ambient air (see Hill col. 5 ln. 54-56) in addition to the air being filtered by the filter device of the primary reference (Botos 5 Fig. 1).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following documents are considered to be pertinent art: Bartos (4,409,978) and Deas et al. (6,817,359) both relate to a portable breathing apparatus and Fangrow, Jr. et al. (5,839,436) relates to a demand valve.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3771

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLIN STUART whose telephone number is (571)270-7490. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/COLIN STUART/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771